



U.S. Department of Justice

DOCKET FILE COPY ORIGINAL

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

February 17, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

In the Matter of:

**Communications Assistance for Law
Enforcement Act**

CC Docket No. 97-213

Dear Ms. Roman Salas:

Enclosed for filing please find an original and eleven copies of the Reply to Comments on FBI/DOJ Petition for Reconsideration and/or Clarification, filed by the Federal Bureau of Investigation in the matter pending before the Commission as captioned above.

Sincerely,


Larry R. Parkinson
General Counsel

935 Pennsylvania Ave., N.W., Room 7427
Washington, D.C. 20535
(202) 324-6829

cc: Public Safety and Private Telecommunications Bureau
Wireless Reference Room, Wireless Telecommunications Bureau
International Transcription Service, Inc.
International Reference Room, International Bureau

No. of Copies rec'd
List A B C D E

0511

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20545

DOCKET FILE COPY ORIGINAL

RECEIVED
FEB 17 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)

Communications Assistance for Law)
Enforcement Act)
_____))

CC Docket 97-213

REPLY TO COMMENTS ON FBI/DOJ PETITION FOR
RECONSIDERATION AND/OR CLARIFICATION

In our petition for reconsideration and/or clarification regarding FCC 99-229, we asked the Commission to clarify or amend its Order to make clear either that: (1) a carrier who sells telecommunications services to a reseller, who in turn sells the services to the public on a common carrier basis, is itself a "telecommunications carrier" under CALEA with respect to such services; or (2) that insofar as the underlying carrier is not a "telecommunications carrier," the reseller remains responsible in full for ensuring that the services it provides to the public are CALEA-compliant. Unless the Commission takes one of these two steps, the Order will create an unwarranted gap in CALEA in cases where the underlying carrier is not deemed to be a telecommunications carrier.

The Telecommunications Resellers Association (TRA) argues that its members have no ability to control the equipment and facilities of providers from whom they purchase services, and for that reason, they should be excused from their CALEA assistance capability obligations with respect to telecommunications services that are provided through such

equipment and facilities. As TRA recognizes, however, resellers are free to insist on CALEA-compliant equipment when they enter into contracts with service providers, and if a particular provider is not willing to offer such equipment, the reseller is free to turn to other service providers who are. As a result, the basic premise that underlies TRA's filing -- namely, that resellers "could never achieve compliance with CALEA assistance capabilities" because they have no control over whether their services are performed with CALEA-compliant equipment (TRA 6) -- is incorrect.

Naturally, if a reseller is currently bound by a contract that precludes it from insisting on the use of CALEA-compliant equipment (TRA 4), we are not suggesting that the reseller should be obliged to break its contract by turning to other providers. But as soon as the reseller is contractually at liberty to do so, it should be required to meet its assistance capability obligations by turning to providers who have CALEA-compliant equipment or by insisting that its current provider employ such equipment.

TRA also suggests that resellers are "not in a position to effect an interception" with respect to communications carried on their service providers' networks (TRA 4). If TRA means that, as a physical matter, the interception must be performed through the service provider's equipment and facilities, that is correct. But it does not follow, as TRA suggests, that resellers are therefore somehow inherently unable to meet the assistance capability obligations set forth in Section 103 of CALEA. Under Section 103, a reseller must "ensure" that its "services that provide a customer or subscriber with the ability to originate, terminate,

or direct communications are capable of" providing call content and reasonably available call-identifying information. 47 U.S.C. § 1002(a). A carrier who contracts with a service provider for the use of CALEA-compliant equipment and facilities has done precisely that. And that is all that our petition seeks.

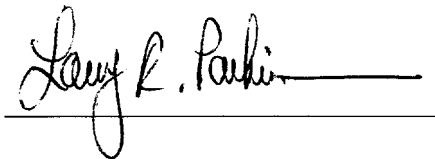
Finally, it should be reiterated that the Commission can close the gap created by its Order in either of two ways: either by requiring resellers to ensure that their services meet CALEA's assistance capability requirements, as discussed above, or by providing that a carrier who sells telecommunications services to a reseller is itself a "telecommunications carrier" under CALEA with respect to such services. If the Commission prefers the latter alternative, that would be equally satisfactory from the standpoint of law enforcement.

DATE: February 17, 2000

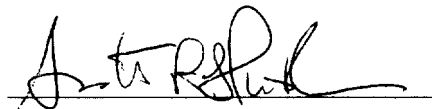
Respectfully submitted,

Louis J. Freeh, Director
Federal Bureau of Investigation

Honorable Janet Reno
Attorney General of the United States

A handwritten signature in cursive script, reading "Larry R. Parkinson", followed by a horizontal line.

Larry R. Parkinson
General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

A handwritten signature in cursive script, reading "Scott R. McIntosh", followed by a horizontal line.

Scott R. McIntosh
Special Counsel
Appellate Staff, Civil Division
U.S. Department of Justice
601 D Street, N.W., Room 9550
Washington, D.C. 20530
(202) 514-4052

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)

Communications Assistance for Law)
Enforcement Act)
_____)

CC Docket No. 97-213

Certificate of Service

I, Myla R. Saldivar-Trotter, of the Federal Bureau of Investigation, Washington, D.C., hereby certify that, on February 17, 2000, I caused to be filed the original and eleven (11) copies of the foregoing Reply to Comments on FBI/DOJ Petition for Reconsideration and/or Clarification, and served copies of the same by First Class Mail, or by hand where noted, upon the parties identified on the attached service list.

DATED at Washington, D.C. this 17th day of February, 2000.



Myla R. Saldivar-Trotter

Certificate of Service

I, Myla R. Saldivar-Trotter, Federal Bureau of Investigation, hereby certify that a true copy of the foregoing **Reply to Comments on FBI/DOJ Petition for Reconsideration and/or Clarification** was served via hand delivery (indicated by *) or by mail to the following parties:


Myla R. Saldivar-Trotter

The Honorable William E. Kennard*
Chairman
Federal Communications Commission
445 Twelfth Street, S.W., Room 8B201
Washington, D.C. 20554

The Honorable Harold Furchtgott-Roth*
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., Room 8A302
Washington, D.C. 20554

The Honorable Michael Powell*
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., Room 8A204
Washington, D.C. 20554

Mark Schneider*
Legal Advisor To Commissioner Ness
Federal Communications Commission
445 Twelfth Street, S.W., Room 8B115B
Washington, D.C. 20554

Peter Tenhula*
Legal Advisor to Commissioner Powell
Federal Communications Commission
445 Twelfth Street, S.W., Room 8A204F
Washington, D.C. 20554

Ari Fitzgerald*
Legal Advisor to Chairman Kennard
Federal Communications Commission
445 Twelfth Street, S.W., Room 8B201
Washington, D.C. 20554

The Honorable Susan Ness*
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., Room 8B115
Washington, D.C. 20554

The Honorable Gloria Tristani*
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., Room 8C302
Washington, D.C. 20554

Bryan Tramont*
Legal Advisor to
Commissioner Furchtgott-Roth
Federal Communication Commission
445 Twelfth Street, S.W., Room 8A302B
Washington, D.C. 20554

Karen Gulick*
Legal Advisor To Commissioner Tristani
Federal Communications Commission
445 Twelfth Street, S.W., Room 8C302F
Washington, D.C. 20554

Christopher J. Wright*
General Counsel
Federal Communications Commission
445 Twelfth Street, S.W., Room 8C755
Washington, D.C. 20554

Thomas Sugrue*
Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Kent Nilsson *
Office of Engineering and Technology
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Jim Burtle*
Office of Engineering and Technology
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Rodney Small*
Office of Engineering and Technology
Federal Communications Commission
445 Twelfth Street, S.W., Room 7A121
Washington, D.C. 20554

Charlene Lagerwerff*
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W., Room 4A124
Washington, D.C. 20554

Tejal Mehta*
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Lawrence E. Strickling*
Chief
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Anna Gomez*
Chief
Network Services Division
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Charles Iseman*
Office of Engineering and Technology
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Julius Knapp*
Office of Engineering and Technology
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Geraldine Matise*
Office of Engineering and Technology
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

James F. Green*
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W., Room 4A237
Washington, D.C. 20554

David O. Ward*
Network Services Division
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Dale Hatfield *
Chief
Office of Engineering and Technology
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Diane Conley*
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 4th Floor
Washington, D.C. 20554

Matthew J. Flanigan, President
Grant Seiffert, Vice President
Government Relations
Telecommunications Industry Association
Suite 300, 2500 Wilson Boulevard
Arlington, VA 22201-3834

Thomas Wheeler
President & CEO
Cellular Telecommunications Industry
Association
Suite 200, 1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Mark J. Golden
Senior Vice President, Industry Affairs
Robert Hoggarth
Senior Vice President, Paging/Messaging
Personal Communications Industry Association
Suite 700
500 Montgomery Street
Alexandria, VA 22314-1561

Alliance for Telecommunication Industry
Solutions
Suite 500
1200 G. Street, N.W.
Washington, D.C. 20005

Susan Aaron*
Office of General Counsel
Federal Communications Commission
445 Twelfth Street, S.W., Room 8A522
Washington, D.C. 20554

David Krech*
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W., Room 4A223
Washington, D.C. 20554

Stewart A. Baker
Tom Barba
Steptoe & Johnson, LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795

Albert Gidari
Perkins Coie
1201 Third Avenue
40th Floor
Seattle, Washington 98101

Roy Neel
President & CEO
United States Telephone Association
Suite 600
1401 H Street, N.W.
Washington, D.C. 20005-2164

Jerry Berman
Executive Director
Center for Democracy and Technology
Suite 1100
1634 Eye Street, N.W.
Washington, D.C. 20006

Mark C. Rosenblum
Ava B. Kleinman
Seth S. Gross
Room 3252F3
295 North Maple Avenue
Basking Ridge, NJ 07920

Pamela J. Riley
David A. Gross
AirTouch Communications, Inc.
1818 N Street, N.W.
Washington, D.C. 20036

James P. Lucier, Jr.
Director of Economic Research
Americans for Tax Reform
Suite 200
1320 Eighteenth Street, N.W.
Washington, D.C. 20036

Anita Sheth
Director, Regulatory Policy Studies
Citizens for a Sound Economy
Suite 700
1250 H Street, N.W.
Washington, D.C. 20005

Eric W. DeSilva
Stephen J. Rosen
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Michael Altschul
Vice President and General Counsel
Randall S. Coleman
Vice President, Regulatory Policy and Law
Cellular Telecommunications Industry Association
Suite 800, 1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

William L. Roughton, Jr.
Associate General Counsel
PrimeCo Personal Communications, L.P.
Suite 320 South
601 Thirteenth Street, N.W.
Washington, D.C. 20005

Joseph R. Assenzo
4900 Main Street, 12th Floor
Kansas City, MO 64112

Lisa S. Dean
Director, Center for Technology Policy
Free Congress Foundation
717 Second Street, N.E.
Washington, D.C. 20002

James X. Dempsey
Senior Staff Counsel
Daniel J. Weitzner
Deputy Director
Center for Democracy and Technology
Suite 1100
1634 Eye Street, N.W.
Washington, D.C. 20006

Lawrence E. Sarjeant
Linda Kent
Keith Townsend
John W. Hunter
Julie E. Rones
United States Telecom Association
Suite 600, 1401 H Street, N.W.
Washington, D.C. 20005

John Pignataro
Senior Technical Advisor
Police Department, City of New York
Fort Totten Building 610
Bayside, NY 11359

Barbara J. Kern
Counsel
Ameritech Corporation
4H74
2000 Ameritech Center Drive
Hoffman Estates, IL 60196

Robert Vitanza
Senior Counsel
Cellular One
480 East Swedesford Road
Wayne, PA 19087

S. Kendall Butterworth
BellSouth Cellular Corp.
Suite 910
1100 Peachtree Street, N.E.
Atlanta, GA 30309-4599

J. LLoyd Nault, II
BellSouth Telecommunications, Inc.
4300 BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375

Kurt A. Wimmer
Gerard J. Waldron
Alane C. Weixel
Ellen P. Goodman
Erin Egan
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566

Kathryn Marie Krause
Edward M. Chavez
1020 Nineteenth Street, N.W.
Washington, D.C. 20036

James D. Ellis
Robert M. Lynch
Durward D. Dupre
Lucille M. Mates
Frank C. Magill
175 E. Houston, Room 4-H-40
San Antonio, TX 78205

M. Robert Sutherland
Angela N. Brown
BellSouth Corporation
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Michael W. White
BellSouth Wireless Data, L.P.
10 Woodbridge Center Drive, 4th Floor
Woodbridge, NJ 07095-1106

Charles M. Nalbourne
Suite 400
3353 Peachtree Road, N.E.
Atlanta, GA 30326

William T. Lake
John H. Harwood, II
Samir Jain
Todd Zubler
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

John M. Goodman
Attorney for Bell Atlantic
1300 I Street, N.W.
Washington, D.C. 20005

Martin L. Stern
Lisa A. Leventhal
Preston Gates Ellis & Rouvelas Meeds LLP
Suite 500
1735 New York Avenue, N.W.
Washington, D.C. 20006

Cheryl A. Tritt
James A. Casey
Morrison & Foerster LLP
Suite 5500
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Sylvia Lesse
Marci Greenstein
Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W.
Suite 520
Washington, D.C. 20037

Henry M. Rivera
Larry S. Solomon
J. Thomas Nolan
Shook, Hardy & Bacon LLP
Suite 900
1850 K Street, N.W.
Washington, D.C. 20006

John T. Scott, III
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Carole C. Harris
Christine M. Gill
Anne L. Fruehauf
McDermott, Will & Emery
600 Thirteenth Street, N.W.
Washington, D.C. 20005

Francis D. R. Coleman
Director of Regulatory Affairs
- North America
ICO Global Communications
Suite 550
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Joel M. Margolis
Corporate Counsel-Regulatory
Nextel Communications, Inc.
Suite 100
1505 Farm Credit Drive
McLean, VA 22102

Alfred G. Richter, Jr.
Roger K. Toppins
Hope E. Thurrott
SBC Communications, Inc.
One Bell Plaza, Room 3023
Dallas, TX 75202

Colette M. Capretz
Fisher Wayland Cooper
Leader & Zaragoza LLP
Suite 400
2001 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Lon C. Levin
Vice President and Regulatory Counsel
American Mobile Satellite Corporation
10802 Park Ridge Boulevard
Reston, VA 20191

Edward J. Wisniewski
Deputy Assistant Administrator
Office of Investigative Technology
Drug Enforcement Administration
8198 Terminal Road
Lorton, VA 22079

Peter M. Connolly
Koteen & Naftalin, LLP
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

L. Marie Guillory
Jill Canfield
National Telephone Cooperative Association
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203-1801

Stephen C. Garavito
Martha Lewis Marcus
Room 1131M1
295 North Maple Avenue
Basking Ridge, NJ 07920

Mary McDemott, Sr. Vice President/Chief of Staff
Government Relations
Robert L. Hoggarth, Sr. Vice President
Paging and Narrowband
Todd B. Lantor, Director
Government Relations
Personal Communications Industry Association
Suite 700, 500 Montgomery Street
Alexandria, VA 22314

Stewart A. Baker
Thomas M. Barba
L. Benjamin Ederington
Matthew L. Stennes
Steptoe & Johnson, LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Colonel Carl A. Williams
Superintendent, New Jersey State Police
P.O. Box 7068
West Trenton, NJ 08628-0068

Dudley M. Thomas
Director, Texas Department of Public Safety
5805 N. Lamar Boulevard
Box 4087
Austin, TX 78773-0001

Roseanna DeMaria
AT &T Wireless
Room 1731
32 Avenue of the Americas
New York, NY 10013

Anne F. La Lena
MCI WorldCom, Inc.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Rich Barth
Vice President and Director,
Telecommunications Strategy
Mary Brooner
Director, Telecommunications Strategy
Motorola, Inc.
Suite 400, 1350 I Street, N.W.
Washington, D.C. 20005